

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte JAMES W. BOYD

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Appeal No. 2001-2329  
Application No. 09/252,761

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ON BRIEF

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Before ABRAMS, FRANKFORT, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (Paper No. 6, mailed October 5, 2000) of claims 1 to 3 and 5 to 11, which are all of the claims pending in this application.<sup>1</sup>

We REVERSE.

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<sup>1</sup> Claims 1, 8 and 10 were amended subsequent to the final rejection.

### BACKGROUND

The appellant's invention relates to a blasthole drill operator's cab, and more particularly, to how the various consoles are positioned in the cab (specification, p. 1). A substantially correct copy of the claims under appeal is set forth in the appendix to the appellant's brief.<sup>2</sup>

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Wilderman	3,734,210	May 22, 1973
Dunn et al. (Dunn)	4,026,379	May 31, 1977
Brown et al. (Brown)	4,124,246	Nov. 7, 1978

Claims 1, 2 and 5 to 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wilderman in view of Brown.

Claims 3 and 8 to 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wilderman in view of Brown and Dunn.

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<sup>2</sup> Minor errors in claims 7 and 9 are set forth on page 4 of the examiner's answer.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection and the answer (Paper No. 11, mailed May 1, 2001) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 10, filed March 26, 2001) and reply brief (Paper No. 12, filed July 5, 2001) for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 3 and 5 to 11 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established

by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

In the rejections before us in this appeal, the examiner determined (final rejection, pp. 2-4) that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to have provided the cab of Wilderman with (1) a second console located within the cab in view of the teachings of Brown, and (2) a swivel chair in view of the teachings of Dunn. Even if these modifications were made to the cab of Wilderman, such changes to Wilderman would not have arrived at the claimed invention for the reasons that follow.

First, claims 5 and 8 to 11 include the limitation that the cab includes a wall having a glass panel. However, none of the applied prior art discloses a cab having a wall with a glass panel. The examiner stated in the final rejection (p. 4) that Wilderman "includes a wall having a glass panel." The examiner further stated in the answer (pp. 5, 6 and 8) that the cab 32 of Wilderman has glass panels (windows) on all sides. We have reviewed the entire disclosure of Wilderman and fail to find any support for the examiner's position that

cab 32 includes any glass panel or window. While it may be implicit in the disclosure of Wilderman that an operator would be able to see out of the cab 32 in order to control the movement of the drilling unit over public highways, such does not implicitly disclose a glass panel or window since a mere opening without a window or glass panel is sufficient for an operator to see out of the cab. Moreover, the specific location of the glass panel as set forth in claims 5 and 8 to 11 (i.e., between the first and second parts of the second console wherein the first part being spaced from the second part with no console part in between) is clearly not taught by Wilderman.

Second, claims 1 to 3 and 5 to 11 include the limitation that the cab includes a second console spaced from the first console, wherein the second console includes a first part immovable relative to a frame and a second part immovable relative to the frame and spaced from the first part with no console part in between. Thus, even if it would have been obvious to have provided the cab of Wilderman with a second console located within the cab in view of the teachings of Brown, the examiner has not determined that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to further provide the second console with a first part immovable relative to a frame and a second part immovable relative to the frame and spaced from the first part with no console part in between. Moreover, the examiner's position (set forth in the first

paragraph of page 6 of the answer) that Brown teaches a cab having a first console spaced from a second console, wherein the second console includes a first part immovable relative to a frame and a second part immovable relative to the frame and spaced from the first part with no console part in between is based on sheer speculation unsupported by the actual disclosure of Brown.

Brown discloses a cab 13 defining an upwardly opening operator space 15 in which are provided a steering control 16 and an auxiliary hydraulic device control 17. Thus, the operator may control the steering of the vehicle by use of the steering control 16 and may control the operation of associated hydraulic equipment, such as the bucket controlling hydraulic equipment 18. As shown in Figure 2, the cab 13 defines an upright sidewall portion 33, and a cover portion 34. In addition, the cab may be provided with a conventional operator seat 35, and a plurality of cover plates 36. A floor portion 30 of the cab includes a plurality of openings, such as openings 37 and 38. Opening 37 is adapted to permit the upward extension therethrough of the steering control 16 and opening 38 is adapted to permit the upward extension therethrough of the auxiliary hydraulic device control console 17.

In our view, Brown only teaches that auxiliary hydraulic device control console 17 is in one part (i.e., not a first part immovable relative to a frame and a second part immovable relative to the frame and spaced from the first part with no console part in between) which extends only through opening 38 in the floor portion 30. Thus, Brown does not teach that auxiliary hydraulic device control console 17 extends through any other opening in the floor portion 30 other than opening 38. Accordingly, it is our opinion that the marked up version of Figure 2 of Brown attached to the answer is in error.<sup>3</sup>

Third, claims 1 to 3 and 5 to 11 include the limitation that the cab is adjacent the vertical mast. However, none of the applied prior art discloses a cab adjacent a vertical mast. In Wilderman (the only piece of prior art with a mast), the vertical mast 26 is not adjacent<sup>4</sup> the operator's cab 32 (see, for example Figure 1).

For the reasons set forth above, a prima facie case of obviousness with respect to the claims under appeal has not been established by the examiner. Accordingly, the

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<sup>3</sup> The cover plate 36 shown in Figure 2 of Brown that would be located behind the back of an operator seated in seat 35 facing the steering control 16 could be an air vent for the engine rather than being a part of a second console.

<sup>4</sup> In our view, the broadest reasonable interpretation consistent with the specification of the term "adjacent" is "next to."

decision of the examiner to reject claims 1 to 3 and 5 to 11 under 35 U.S.C. § 103 is reversed.



CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3 and 5 to 11 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS  
Administrative Patent Judge

CHARLES E. FRANKFORT  
Administrative Patent Judge

JEFFREY V. NASE  
Administrative Patent Judge

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